

Stuart Showalter
Child Custody Life Coaching

PRO SE CHILD CUSTODY DOCUMENT WRITING

If you are representing yourself in a child custody proceeding then you are going to need some help with writing your pleadings or drafting other court filings. Competent free help is always welcomed help. So first go to your taxpayer funded -

Indiana Supreme Court Self-Help section - in.gov/judiciary/selfservice/

There you may find sample court forms that are commonly used in dissolution, paternity, child custody and child support matters. While these forms may be printed and completed by filling in blanks or striking language I suggest that you type your own forms. This will provide a ready to use template for future documents you write and also provide continuity between them. Here is the format that I use and suggest:

STATE OF INDIANA) IN THE [county] [superior/circuit] COURT [#]
) SS:
COUNTY OF MARION) CAUSE NUMBER XXXXX -0000-DR-0000
)
IN RE: THE MARRIAGE OF [name])
)
[person who filed])
 Petitioner)
)
 v)
)
[person who received summons])
 Respondent)
)

MOTION

Comes now the [Petitioner or Respondent], [your name], pro se, in his Motion [include the name of the motion as it appears above] now states and alleges as follows;

- 1] Start making your statements of the case here – background information relevant to the current motion.
- 2] Double space this section. I use “Arial” size “12” for the text. I also use “full

justify”

3] Use one inch margins on each side.

4] I base this format for drafting documents on Indiana Appellate Rule 43.

B] Paper. The pages shall be 8 1/2 by 11 inch white paper of a weight normally used in printing and typing.

C] Production. The document shall be produced in a neat and legible manner using black print. It may be typewritten, printed or produced by a word processing system. It may be copied by any copying process that produces a distinct black image on white paper. Text shall appear on only one side of the paper.

D] Print Size. The font shall be Arial, Baskerville, Book Antigua, Bookman, Bookman Old Style, Century, Century Schoolbook, Courier, Courier New, CG Times, Garamond, Georgia, New Baskerville, New Century Schoolbook, Palatino or Times New Roman and the typeface shall be 12-point or larger in both body text and footnotes.²³

E] Spacing. All printing in the text shall be double-spaced except lengthy quotes and footnotes shall be single-spaced. Single-spaced lines shall be separated by at least 4-point spaces.

5] Provide your statements of the facts that support your motion.

6] State the relief that you are seeking based upon your statement of facts.

WHEREFORE, your undersigned respectfully requests that the Court [state the relief that you are seeking and then include this standard catch-all phrase] and all other relief just and proper in the premises.

Some motions must be verified. For those include the following language:

I AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE TO THE BEST OF MY BELIEF AND ABILITY.

So stated this _____ day of _____ 2014 [I actually suggest that you use the blanks for the dates and fill them in while in the Clerk's Office. You don't want to get caught in a traffic delay and miss the hours of operation with documents dated for that day.] It is also acceptable to mail the filing to the Clerk's Office and whomever service must be made upon.

[sign your name on the line and then include name and address below it. This is single spaced]

Pursuant to Indiana Trial Rule 5 you must serve a copy of all filings on the other party or parties. You can find this information on an Order issued by the Court. After the judge's signature down the left side should be "DISTRIBUTION:" followed by the names and addresses of all the parties. Generally it is you and the other parent. Here is the form of the certificate of service that I see commonly used.

CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon [petitioner/respondent - you may also use mother/father; whatever was used in the body of the filing] by depositing a copy of such in the U.S. Mail, postage pre-paid, addressed to [if the other parent has an attorney appearing on his or her behalf then say "counsel of record", [atty or parent name], [Street], [city], IN [Zip] on this _____ day of _____ 2014

PROPOSED ORDER

I suggest that you include a proposed order with any filing you submit. Sometimes the local rules require it. Use the same header and in place of the motion title write ORDER. You may want to follow that with whatever the title of your motion is such as ORDER SETTING HEARING if the motion was to set a hearing date for an issue.

Here is the standard language that appears in Orders:

The Court having been duly heard in the premises now Finds and ORDERS;

[This is where you include what you requested to be ordered.]

Next, just as you included a date line and a signature line for yourself do the same for the judge. Instead of "So stated this ___ day" it will be "So Ordered this"

There is no certificate of service but do include the Distribution list.

HOW TO WRITE LIKE AN ATTORNEY

In a word – cheat. In school and elsewhere the message that copying someones' writing is unethical, is plagiarism, or is otherwise unacceptable is continually reinforced. But in law no such standard applies. It is actually encouraged and in the following section I will describe how it is done and how you should.

Court of Appeals Opinions

When issuing an opinion the Court of Appeals cites to other cases as support for their rationale in the current opinion. This is known as citing to case law. Following is an example from a recent unpublished opinion – Neal v McConnell decided 09 December 2013. You may search for it by using “Neal v McConnell 09 December 2013 pdf” Beginning on page 7 is the discussion on custody as follows:

A. Custody

Mother contends that Father failed to meet his burden of proving a change in circumstances to warrant a custody modification. Pursuant to Indiana Code section 31-17-2-21,

“a trial court may not modify a custody order unless the modification is in the best interests of the child and a substantial change has occurred in one or more of the following factors which a court may consider in initially determining custody:

(1) The age and sex of the child.

(2) The wishes of the child’s parent or parents.

(3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.

(4) The interaction and interrelationship of the child with:

(A) the child’s parent or parents;

(B) the child’s sibling; and

(C) any other person who may significantly affect the child’s best interests.

(5) The child’s adjustment to the child’s:

(A) home;

(B) school; and

(C) community.

(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic violence by either parent.

(8) Evidence that the child has been cared for by a de facto custodian . . . “

Ind. Code § 31-17-2-8.

There the appellate panel simply copied the relevant portion of the Indiana Code. Next they copied sentences from previously decided cases [published opinions] as cited to them to support their decision.

*“In the initial custody determination, both parents are presumed equally entitled to custody, but a petitioner seeking subsequent modification bears the burden of demonstrating the existing custody should be altered.” Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). Custody matters typically turn on factual determinations and will be set aside only if such determinations they are clearly erroneous. Baxendale v. Raich, 878 N.E.2d 1252, 1257 (Ind. 2008). We will not reverse a child custody decision if any evidence or legitimate inferences from such evidence support the trial court’s judgment. *Id.* at 1257-58. “The concern*

for finality in custody matters reinforces this doctrine.” Id. “On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.” Kirk, 770 N.E.2d at 307 (quoting Brickley v. Brickley, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)).

From reading all of those sentences copied from other cases it starts becoming clear what ultimately happened, which is that the appellate panel affirmed the trial court's modification of custody. The important part of this lesson comes from the next paragraph:

*Pursuant to the original **Settlement Agreement** the parties shared joint legal and physical custody, and the children alternated between Mother's and Father's care every seven days (“seven-seven custody”). In December 2010, following a hearing on a **petition for modification of custody**, the trial court determined that D.L.M. was at risk of being held back a grade and that, it would be less disruptive academically and in D.L.M.'s best interest, to stay with Mother on school days and with Father on the weekends (“five-two custody”). Appellant's App. at 208. [emphasis added]*

That paragraph identifies two documents that could be useful to you as you go through the divorce and child custody process while representing yourself. The first is the Settlement Agreement. By obtaining this document you can see what considerations go in to resolving the main issues in a divorce and custody case. The second is the Petition for Modification of Custody. When you obtain this document you will see how to plead a custody case. It will serve as an example of what you should be including in a custody petition be it for an initial determination or a modification.

Do an online search for “child custody modification Indiana” to find other cases. You may want to also include “pdf” if you get too many returns for lawyers, Facebook pages, or news stories. On the following page is a wonderful resource for finding case law.

The Children's Law Center of Indiana – A Program of Kids' Voice of Indiana
5160 E. 65th Street, Suite 109 Indianapolis, IN 46220
Ph: (317) 558-2870 Fax (317) 558-2945
Web Site: clcind.org Email: info@clcind.org

Once you have identified a few cases that appear similar to yours you can call or go to the clerk's office in the county where the case was filed and request copies of the pleadings like what you intend to file. Be prepared to pay between ten cents and one dollar per page.

Then all you do is substitute your information as I explained in the section about formatting your document.

That is essentially the same thing that attorneys do. There are certain things that are universal in all pleading – header, signature line, certificate of service – and some that are common to particular types of pleading such as stating the change of

circumstances that meet the statutory requirement [IC 31-17-2-8, 31-14-14-3] for a modification of physical custody.

It is best to at a minimum have an attorney look at your document. I have attorneys throughout the state that I work with who can do this on an hourly fee without representing you*. I also have a significant amount of filings across a wide range of matters related to child custody filed in trial courts that are available in pdf files for your use.

If you would like for me to assist you in maintaining control of your life as you go through this process, show you how to search for and find sample documents, and assist you in finding an attorney who can help you on an as needed basis [unbundled legal services] then please contact my scheduler for an application - scheduler@stuartshowalter.com

* This is known as an advisory attorney or unbundled legal service. The attorney only performs the tasks requested by the client while allowing the client to still be responsible for the day-to-day operations of his or her case. The costs are substantially lower than full representation service.

Update: A client who followed this process, wrote his own motion, had it reviewed and modified by an advisory attorney received a court order of 23 May 2014 directing him to disclose within five days who the attorney assisting him is. This was based upon opposing counsel's contention that the motion was crafted to well for him to have done it himself.

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